

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Bail App No. 206/2026

CrlM No. 1884/2026

Layaqat Hussain Shah and ors.

.....Appellant(s)/Petitioner(s)

Through: Mr. Vikram Sharma, Sr. Advocate with
Mr. Sachin Dev Singh, Advocate &
Mr. Mazher Ali Khan, Advocate

vs

UT of J&K and anr.

..... Respondent(s)

Through:

Coram: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER

18.09.2026

1. This is an application filed by the petitioners seeking bail in anticipation of their arrest in FIR No. 294/2026 for offences under Section 326(g) and Section 3(5) of BNS registered with Police Station, Surankote.
2. It appears that the petitioners had approached the court of learned Additional District and Sessions Judge, Poonch for grant of bail in the aforesaid FIR in the first instance and vide order dated 07.09.2026, the learned Additional Sessions Judge was pleased to grant interim anticipatory bail to the petitioners in the aforesaid FIR with a rider *inter alia* that interim protection shall cease to operate if the petitioners are found involved in any heinous offence punishable with death, imprisonment for life, or imprisonment exceeding seven years.
3. After obtaining objections from the prosecution, it seems that the learned Additional Sessions Judge was not inclined to extend the interim protection in favour of the petitioners, which is apparent from

subsequent order dated 08.09.2026, whereby the petitioners were compelled to withdraw the bail application. It is in these circumstances that the petitioners have approached this Court.

4. In this particular case, the learned Additional Sessions Judge while granting interim protection to the petitioners had specifically made a mention about the FIR and the offences for which the said FIR had been registered. Section 326(g) of BNS carries punishment of imprisonment for life or imprisonment of either description for a term which may extend to ten years. Thus, the learned Additional Sessions Judge was well aware of the fact that offences for which the petitioners are seeking anticipatory bail carry punishment for more than seven years imprisonment. In spite of having knowledge of this fact, the learned Sessions Judge proceeded to put a rider in his order that the bail would not apply to the offences which carry punishment of imprisonment for more than seven years. If at all the learned Additional Sessions Judge was not inclined to grant bail to the petitioners in a case of the present nature, it was always open to the court to dismiss the bail application but passing an order which on the face of it did not protect the accused petitioners, was an un-necessary exercise.
5. There is another aspect of the matter which needs to be clarified. The powers of Sessions court and the High Court under Section 482 BNSS regarding grant of bail in anticipation of arrest of an accused, are concurrent. There is a notion prevailing in some sections of District Judiciary that if an offence carries punishment of more than seven years, the Sessions court loses its jurisdiction to grant bail in

anticipation of arrest. It has to be clarified that there is no legal or statutory bar either for the High Court or for Court of Sessions to grant bail in anticipation of arrest to an accused who has been booked for an offence carrying punishment of more than seven years of imprisonment in appropriate cases. Of course while exercising the discretion of granting anticipatory bail, the facts and circumstances of the case have to be weighed and analyzed by the court.

6. This Court has come across numerous instances where the Sessions Judges have declined to grant anticipatory bail or to extend the interim protection once they come to know that the offence alleged to have been committed by the accused carries punishment of more than seven years. In some cases the learned Session Judges grant temporary protection to an accused so as to enable him to approach the Court for grant of regular bail. The Supreme Court of India in the case of ‘Sushila Aggarwal vs. State (NCT of Delhi) AIR 2020 SC 831 has made it clear that the Court is not obliged to impose conditions limiting relief in terms of time and that such condition should not be imposed in a routine manner. This trend has to stop and the Sessions Judges have to exercise their power to grant anticipatory bail in accordance with law and the judicial precedents on the subject by deciding such applications on their own merits.

7. In view of what has been discussed hereinabove, while granting interim protection to the petitioners in anticipation of their arrest for a period of one week, the learned Additional Sessions Judge, Poonch is directed to revive the application of the petitioners for grant of

anticipatory bail and decide the same on its merits after hearing the prosecution and the accused.

8. The bail application is **disposed of**.

(SANJAY DHAR)
JUDGE

Jammu
18.09.2026
Neha-II

